

AMENDED IN SENATE MAY 28, 2009
AMENDED IN SENATE APRIL 28, 2009
AMENDED IN SENATE APRIL 13, 2009
AMENDED IN SENATE MARCH 16, 2009

SENATE BILL

No. 50

Introduced by Senator Corbett

January 13, 2009

An act to add Section 13957.3 to the Government Code, and to amend Sections 13823.95 and 13823.11 *amend Section 13823.95* of the Penal Code, relating to victims of sexual assault.

LEGISLATIVE COUNSEL'S DIGEST

SB 50, as amended, Corbett. Victims of sexual assault.

~~Existing law authorizes state compensation for victims of crime, as specified.~~

~~This bill would additionally authorize state payment of claims by medical providers for the costs of medical examinations and treatment for victims of sexual assaults, as specified.~~

Existing law provides that no costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the forensic examination of the victim of a sexual assault for the purposes of gathering evidence for possible prosecution shall be charged directly or indirectly to the victim of the assault.

~~This bill would provide that collection and retention of evidence gathered during the examination of a victim of sexual assault would be the responsibility of the law enforcement agency requesting the examination, and would prohibit charging the victim of a sexual assault~~

~~for the costs of medical examination or treatment, either directly or indirectly, including through the victim's insurance carrier.~~

~~By imposing evidence retention duties on local law enforcement agencies, this bill would impose a state-mandated local program. Existing law provides that the law enforcement agency in the jurisdiction in which the alleged sexual assault was committed which requests the examination has the option of determining whether or not the examination will be performed in the office of a physician and surgeon.~~

The bill would delete the provisions giving that law enforcement agency the option of determining whether or not the examination will be performed in the office of a physician and surgeon.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~.
State-mandated local program: ~~yes-no~~.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13823.95 of the Penal Code is amended
2 to read:

3 13823.95. No costs incurred by a qualified health care
4 professional, hospital, or other emergency medical facility for the
5 examination of the victim of a sexual assault, as described in the
6 protocol developed pursuant to Section 13823.5, when the
7 examination is performed, pursuant to Sections 13823.5 and
8 13823.7, for the purposes of gathering evidence for possible
9 prosecution, shall be charged directly or indirectly to the victim
10 of the assault. Those costs shall be treated as local costs and
11 charged to the local governmental agency in whose jurisdiction
12 the alleged offense was committed.

13 Bills for these costs shall be submitted to the law enforcement
14 agency in the jurisdiction in which the alleged offense was
15 committed which requests the examination.

16 ~~The law enforcement agency in the jurisdiction in which the~~
17 ~~alleged offense was committed which requests the examination~~

1 has the option of determining whether or not the examination will
2 be performed in the office of a physician and surgeon.

3 ~~SECTION 1. Section 13957.3 is added to the Government~~
4 ~~Code, to read:~~

5 ~~13957.3. Notwithstanding any other provision of this article,~~
6 ~~the board shall pay claims submitted by medical providers for the~~
7 ~~costs of medical examinations and treatment for victims of sexual~~
8 ~~assault, unless an alternative source of payment is available.~~

9 ~~SEC. 2. Section 13823.95 of the Penal Code is amended to~~
10 ~~read:~~

11 ~~13823.95. No costs incurred by a qualified health care~~
12 ~~professional, hospital, or other emergency medical facility for the~~
13 ~~forensic examination of the victim of a sexual assault, as described~~
14 ~~in the protocol developed pursuant to Section 13823.5, when the~~
15 ~~examination is performed, pursuant to Sections 13823.5 and~~
16 ~~13823.7, for the purposes of gathering evidence for possible~~
17 ~~prosecution shall be charged directly or indirectly to the victim of~~
18 ~~the assault. Those costs shall be treated as local costs and charged~~
19 ~~to the local governmental agency in whose jurisdiction the alleged~~
20 ~~offense was committed.~~

21 ~~The costs of medical examination or treatment, whether~~
22 ~~performed as part of a forensic examination or separately, shall~~
23 ~~not be charged directly or indirectly to the sexual assault victim,~~
24 ~~including through the victim's insurance carrier. Bills for medical~~
25 ~~examination and treatment shall be paid by the California Victim~~
26 ~~Compensation and Government Claims Board. Collection and~~
27 ~~retention of any evidence gathered during the examination of a~~
28 ~~victim of a sexual assault shall be the responsibility of the law~~
29 ~~enforcement agency in the jurisdiction in which the alleged offense~~
30 ~~was committed.~~

31 ~~SEC. 3. Section 13823.11 of the Penal Code is amended to~~
32 ~~read:~~

33 ~~13823.11. The health care provider shall follow minimum~~
34 ~~standards for the medical examination and treatment of victims of~~
35 ~~sexual assault or attempted sexual assault, including child~~
36 ~~molestation. The minimum standards for the forensic examination~~
37 ~~of victims of sexual assault or attempted sexual assault, including~~
38 ~~child molestation and the collection and preservation of evidence~~
39 ~~therefrom include all of the following:~~

40 ~~(a) Law enforcement authorities shall be notified.~~

1 ~~(b) In conducting the physical examination, the outline indicated~~
2 ~~in the form adopted pursuant to subdivision (c) of Section 13823.5~~
3 ~~shall be followed.~~

4 ~~(c) Consent for a physical examination, treatment, and collection~~
5 ~~of evidence shall be obtained.~~

6 ~~(1) Consent to an examination for evidence of sexual assault~~
7 ~~shall be obtained prior to the examination of a victim of sexual~~
8 ~~assault and shall include separate written documentation of consent~~
9 ~~to each of the following:~~

10 ~~(A) Examination for the presence of injuries sustained as a result~~
11 ~~of the assault.~~

12 ~~(B) Examination for evidence of sexual assault and collection~~
13 ~~of physical evidence.~~

14 ~~(C) Photographs of injuries.~~

15 ~~(2) Consent to treatment shall be obtained in accordance with~~
16 ~~usual hospital policy.~~

17 ~~(3) A victim of sexual assault shall be informed that he or she~~
18 ~~may refuse to consent to an examination for evidence of sexual~~
19 ~~assault, including the collection of physical evidence, but that a~~
20 ~~refusal is not a ground for denial of treatment of injuries and for~~
21 ~~possible pregnancy and sexually transmitted diseases, if the person~~
22 ~~wishes to obtain treatment and consents thereto. No costs incurred~~
23 ~~by a qualified health care professional, hospital, or other emergency~~
24 ~~medical facility for the treatment of a victim of a sexual assault~~
25 ~~shall be charged directly or indirectly to the victim of a sexual~~
26 ~~assault.~~

27 ~~(4) Pursuant to Chapter 3 (commencing with Section 6920) of~~
28 ~~Part 4 of Division 11 of the Family Code, a minor may consent to~~
29 ~~hospital, medical, and surgical care related to a sexual assault~~
30 ~~without the consent of a parent or guardian.~~

31 ~~(5) In cases of known or suspected child abuse, the consent of~~
32 ~~the parents or legal guardian is not required. In the case of~~
33 ~~suspected child abuse and nonconsenting parents, the consent of~~
34 ~~the local agency providing child protective services or the local~~
35 ~~law enforcement agency shall be obtained. Local procedures~~
36 ~~regarding obtaining consent for the examination and treatment of,~~
37 ~~and the collection of evidence from, children from child protective~~
38 ~~authorities shall be followed.~~

39 ~~(d) A history of sexual assault shall be taken.~~

1 The history obtained in conjunction with the examination for
2 evidence of sexual assault shall follow the outline of the form
3 established pursuant to subdivision (c) of Section 13823.5 and
4 shall include all of the following:

5 (1) A history of the circumstances of the assault.

6 (2) For a child, any previous history of child sexual abuse and
7 an explanation of injuries, if different from that given by a parent
8 or person accompanying the child.

9 (3) Physical injuries reported.

10 (4) Sexual acts reported, whether or not ejaculation is suspected,
11 and whether or not a condom or lubricant was used.

12 (5) Record of relevant medical history.

13 (e) (1) If indicated by the history of contact, a female victim
14 of sexual assault shall be provided with the option of emergency
15 contraception by a physician or other health care provider.

16 (2) Emergency contraception shall be dispensed by a physician
17 or other health care provider upon the request of the victim.

18 (f) Each adult and minor victim of sexual assault who consents
19 to a medical examination as part of the forensic examination for
20 collection of evidentiary material shall have a medical physical
21 examination which includes, but is not limited to, all of the
22 following:

23 (1) Inspection of the clothing, body, and external genitalia for
24 injuries and foreign materials.

25 (2) Examination of the mouth, vagina, cervix, penis, anus, and
26 rectum, as indicated.

27 (3) Documentation of injuries and evidence collected.

28 Prepubertal children shall not have internal vaginal or anal
29 examinations unless absolutely necessary. This does not preclude
30 careful collection of evidence using a swab.

31 (g) The collection of physical evidence shall conform to the
32 following procedures:

33 (1) Each victim of sexual assault who consents to an examination
34 for collection of evidence shall have the following items of
35 evidence collected, except where he or she specifically objects:

36 (A) Clothing worn during the assault.

37 (B) Foreign materials revealed by an examination of the
38 clothing, body, external genitalia, and pubic hair combings.

1 ~~(C) Swabs and slides from the mouth, vagina, rectum, and penis,~~
2 ~~as indicated, to determine the presence or absence of sperm and~~
3 ~~sperm motility, and for genetic marker typing.~~

4 ~~(D) If indicated by the history of contact, the victim's urine and~~
5 ~~blood sample, for toxicology purposes, to determine if drugs or~~
6 ~~alcohol were used in connection with the assault. Toxicology~~
7 ~~results obtained pursuant to this paragraph shall not be admissible~~
8 ~~in any criminal or civil action or proceeding against any victim~~
9 ~~who consents to the collection of physical evidence pursuant to~~
10 ~~this paragraph. Except for purposes of prosecuting or defending~~
11 ~~the crime or crimes necessitating the examination specified by this~~
12 ~~section, any toxicology results obtained pursuant to this paragraph~~
13 ~~shall be kept confidential, may not be further disclosed, and shall~~
14 ~~not be required to be disclosed by the victim for any purpose not~~
15 ~~specified in this paragraph. The victim shall specifically be~~
16 ~~informed of the immunity and confidentiality safeguards provided~~
17 ~~herein.~~

18 ~~(2) Each victim of sexual assault who consents to a medical~~
19 ~~examination, whether or not in connection with a forensic~~
20 ~~examination, for the collection of evidence shall have reference~~
21 ~~specimens taken, except when he or she specifically objects thereto.~~
22 ~~A reference specimen is a standard from which to obtain baseline~~
23 ~~information (for example: pubic and head hair, blood, and saliva~~
24 ~~for genetic marker typing). These specimens shall be taken in~~
25 ~~accordance with the standards of the local criminalistics laboratory.~~

26 ~~(3) A baseline gonorrhea culture, and syphilis serology, shall~~
27 ~~be taken, if indicated by the history of contact. Specimens for a~~
28 ~~pregnancy test shall be taken, if indicated by the history of contact.~~

29 ~~(4) (A) If indicated by the history of contact, a female victim~~
30 ~~of sexual assault shall be provided with the option of emergency~~
31 ~~contraception by a physician or other health care provider.~~

32 ~~(B) Emergency contraception shall be dispensed by a physician~~
33 ~~or other health care provider upon the request of the victim.~~

34 ~~(h) Preservation and disposition of physical evidence shall~~
35 ~~conform to the following procedures:~~

36 ~~(1) All swabs and slides shall be air-dried prior to packaging.~~

37 ~~(2) All items of evidence including laboratory specimens shall~~
38 ~~be clearly labeled as to the identity of the source and the identity~~
39 ~~of the person collecting them.~~

1 ~~(3) The evidence shall have a form attached which documents~~
2 ~~its chain of custody and shall be properly sealed.~~

3 ~~(4) The evidence shall be turned over to the proper law~~
4 ~~enforcement agency.~~

5 ~~SEC. 4. If the Commission on State Mandates determines that~~
6 ~~this act contains costs mandated by the state, reimbursement to~~
7 ~~local agencies and school districts for those costs shall be made~~
8 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
9 ~~4 of Title 2 of the Government Code.~~